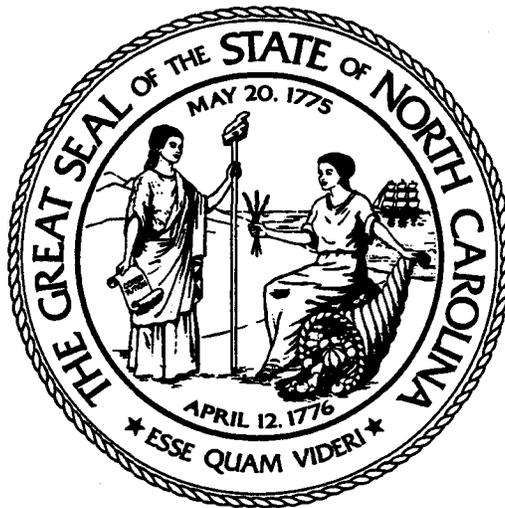


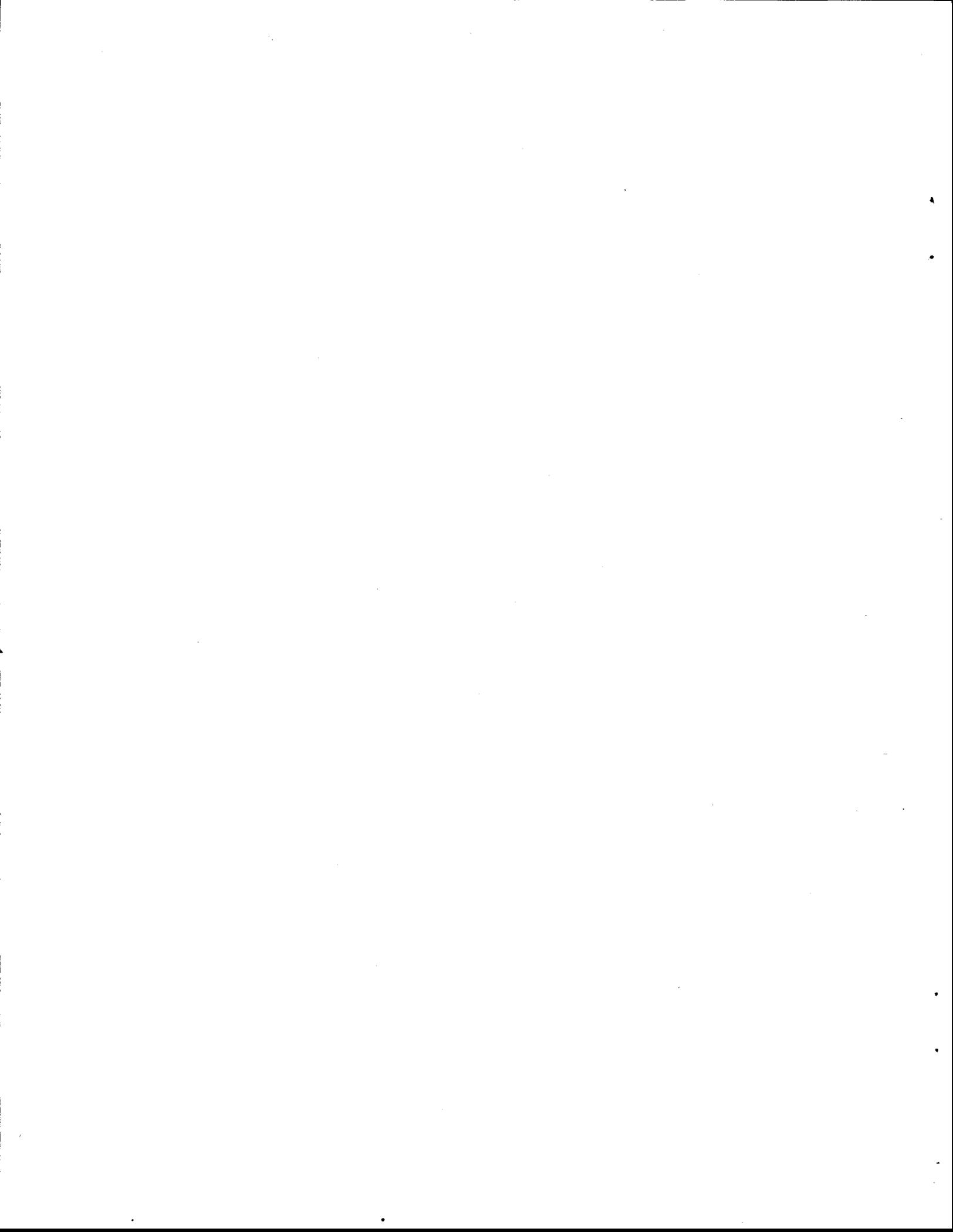
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

ENVIRONMENTAL PROFESSIONALS



ASSESSMENT REPORT

1995





North Carolina General Assembly
Legislative Services Office
Legislative Office Building
300 N. Salisbury Street, Raleigh, N. C. 27603-5925

GEORGE R. HALL, JR., Legislative Administrative Officer
(919) 733-7044

DONALD W. FULFORD, Director
Automated Systems Division
Suite 400, (919) 733-6834

GERRY F. COHEN, Director
Bill Drafting Division
Suite 100, (919) 733-6660

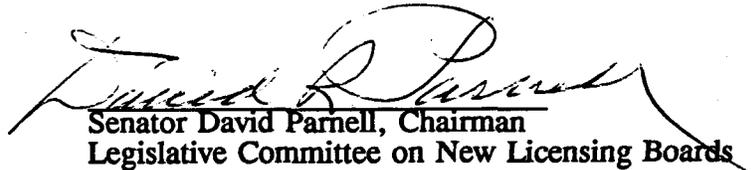
THOMAS L. COVINGTON, Director
Fiscal Research Division
Suite 619, (919) 733-4910

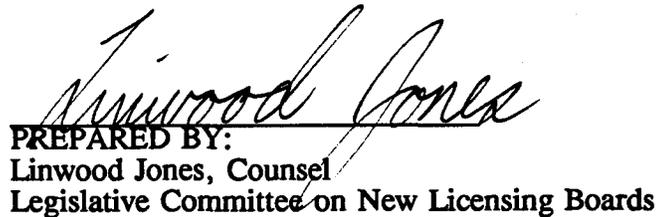
TERRENCE D. SULLIVAN, Director
Research Division
Suite 545, (919) 733-2578

June 15, 1995

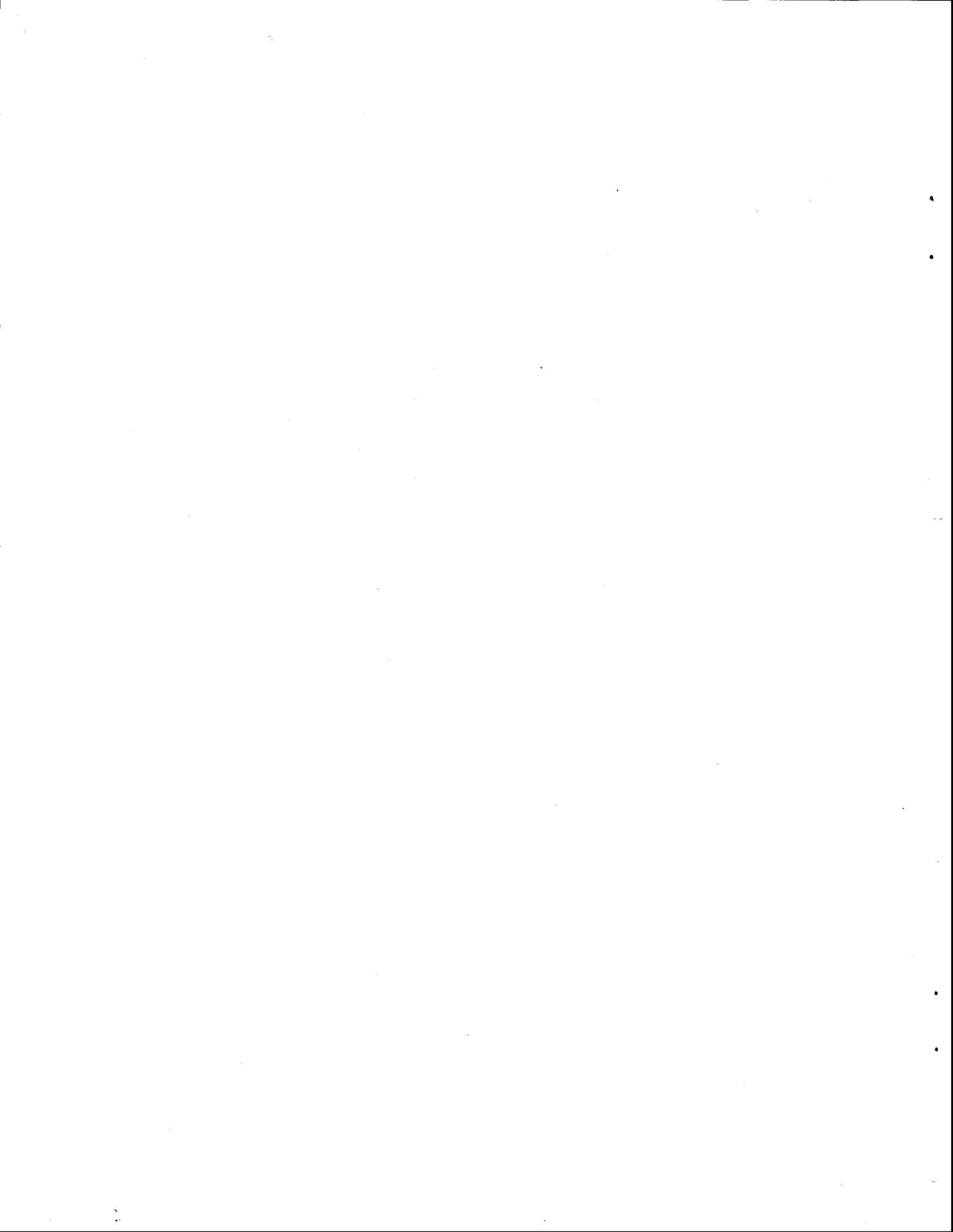
TO THE MEMBERS OF THE GENERAL ASSEMBLY:

Attached for your consideration is the preliminary assessment report on qualified environmental professionals (House Bill 880) as required under Article 18A of Chapter 120 of the General Statutes.


Senator David Parnell, Chairman
Legislative Committee on New Licensing Boards


PREPARED BY:
Linwood Jones, Counsel
Legislative Committee on New Licensing Boards





**MEMBERS OF THE LEGISLATIVE COMMITTEE
ON NEW LICENSING BOARDS**

(1995-96)

Senator David Parnell, Chairman

Senator Frank Ballance

Representative Michael Decker

Senator Fred Hobbs

Representative Linwood Mercer

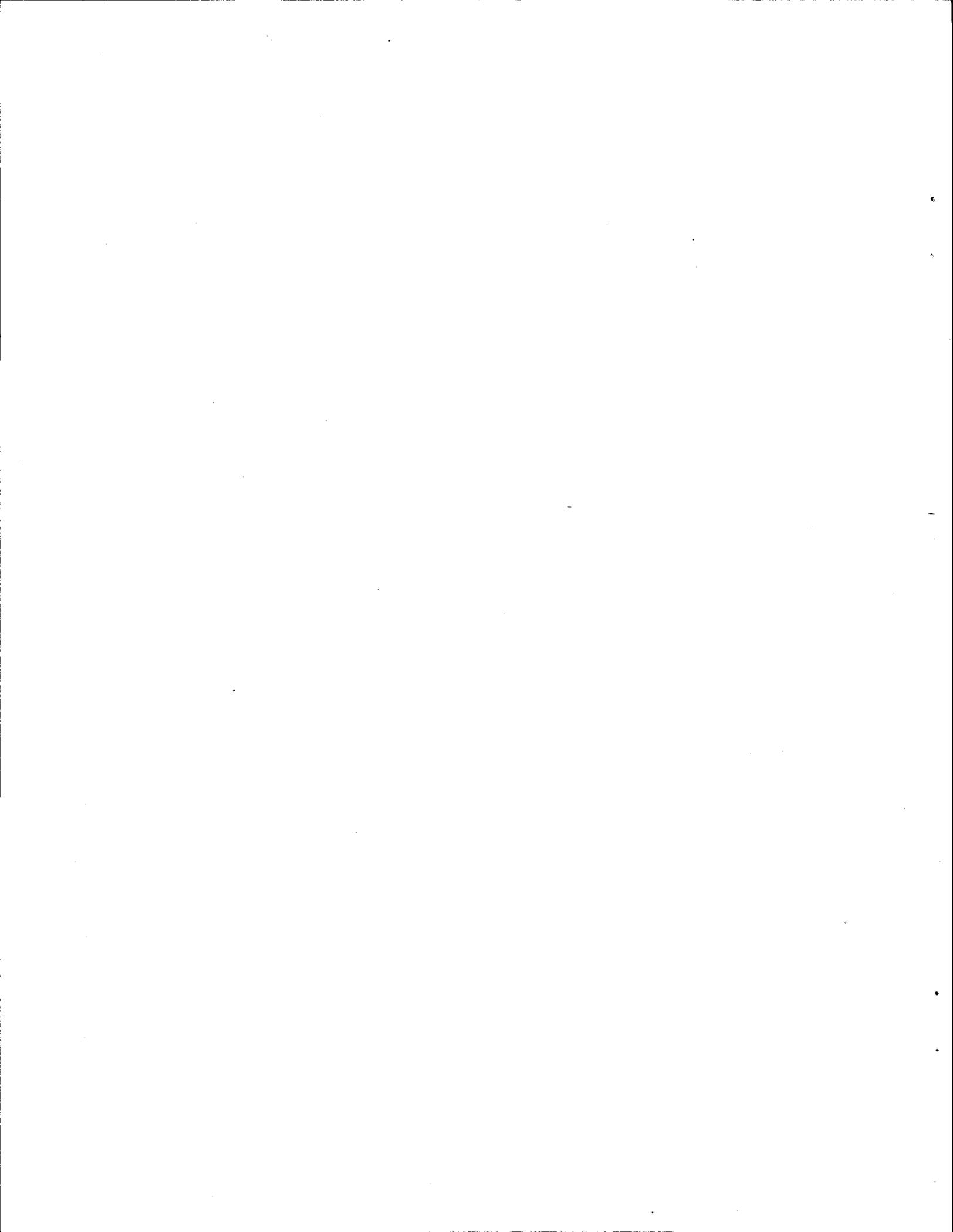
Senator Paul Smith

Representative Frank Mitchell

Senator R.C. Soles

Representative Wilma Sherrill

(Senator Jesse Ledbetter)



ASSESSMENT REPORT

"Environmental professionals" are a class of persons who perform analysis, evaluation, testing, and monitoring of the environment, including the air, soils, groundwater, surface water, and related resources. Under the proposal for which this assessment report is written (House Bill 880), an environmental professional would be recognized to perform and sign off on the same work as an engineer or geologist with respect to certain activities. The activities covered are required by the Environmental Management Commission for (1) air quality standards, emission control standards, and classifications for air contaminant sources, (2) water quality standards and classifications, (3) water and air quality reporting, and (4) underground storage tanks used for storage of hazardous substances or oil.

The Environmental Management Commission would be given authority to determine which types of existing certifications, registrations, and licenses exhibit the necessary competency for environmental engineers to perform these activities. The Commission would review the educational and experience requirements of these licenses, certifications, and registrations before determining which are appropriate for recognition. There are several existing national credentialing boards and societies, of which four are highlighted in the questionnaire submitted with the report: the Institute of Professional Environmental Practice (IPEP), the Institute of Hazardous Materials Management (IHMM), the National Registry of Environmental Professionals (NREP), and the National Association of Environmental Professionals (NAEP). Each of these four organizations impose educational and experience requirements as a prerequisite for credentialing.

Within the past 18 months, the Environmental Management Commission has amended its rules governing underground storage tanks (UST) and air quality to require professional engineers and/or geologists to sign off on site assessment activity of UST removal and site remediation and permits for air emission devices at certain facilities. These rules changes were apparently made by the EMC in response to determinations by the licensing boards for geologists and engineers that certain activities being performed for USTs and air quality constituted the practice of engineering or geology. Prior to the rules changes, any competent persons could perform these activities.

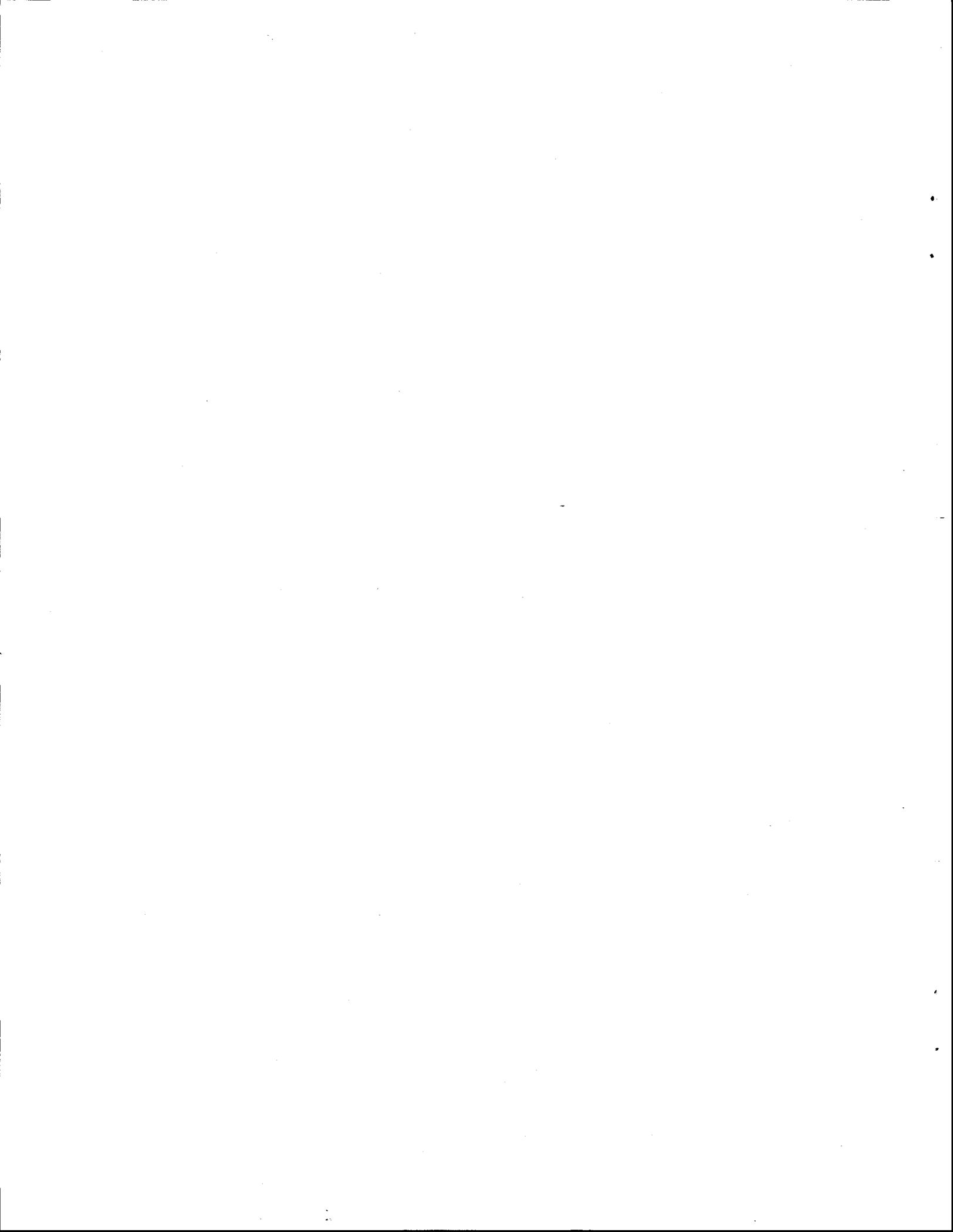
There are approximately 500 persons in North Carolina who would qualify as an environmental professional if EMC were to adopt the four major certifications available (IPEP, IHMM, NAEP, and NREP). The proponents believe that approximately fifteen percent of the memberships of these organizations are professional engineers.

House Bill 880 does not create a new licensing board. However, because it would have the effect of allowing persons not currently licensed by the State to meet national credentialing criteria acceptable to the Environmental Management Commission and thereafter engage in activities that are currently restricted to two professions that are licensed by the State (engineering and geology), the bill was subject to review by the Legislative Committee on New Licensing Boards. It was the Committee's opinion, following discussion of and testimony on this matter, that House Bill 880 was not sufficiently developed to meet the criteria for licensure under G.S. 120-149.4(b).

Assessment Report
Page 3

The Legislative Committee on New Licensing Boards recommends that House Bill 880 not receive favorable consideration. This is a preliminary assessment report. The report is based on House Bill 880 and the questionnaire response attached to this report.

90LLJ-886





HUSTED & ASSOCIATES INC.
P.O. BOX 5256
HIGH POINT, N.C. 27262

Environmental Management Services

Linwood Jones, Attorney Research Division
North Carolina General Assembly
545 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925

RECEIVED

JUN 5 1995

RESEARCH DIVISION

BUS. 919-869-3097
FAX: 919-869-3031

June 1, 1995

**RE: RESPONSE TO MEMO OF 5/26/95, THE COMMITTEE ON NEW LICENSING
BOARDS TO REVIEW H.B.880 PRESENTED BY REP. STEVE WOOD.**

Dear Mr. Jones:

I am responding to your questions in the memo you faxed on May 26, 1995. The responses will be supported by collected documentation which will be sent to you. I have met with other environmental professionals as House Bill 880 was developed and have included their comments in these answers.

Please note we are not requesting the establishment of a professional licensing board but rather the state's acknowledgement of existing national environmental certification boards. This would allow qualified environmental professionals to continue offering environmental services in this state.

This request for environmental competency recognition by the state stems from the following two incidences. In Jan. 1994, DEM modified 15NCAC 2L and 2N regulations to require a PE or PG to sign off on site assessment activity surrounding underground storage tank removal and contamination clean up. In Feb. 1995, DEM modified 15NCAC 2Q regulations to require a PE to sign off on air permits for industrial complexes. Prior to this time the rules stated any knowledgeable individual could perform these tasks. Many environmental consultants, state regulatory agents and plant engineers completed these tasks routinely but not are not qualified to continue. No mechanism was established by the state to either "grandfather" these existing environmental professionals or recognize their competency.

Question 1 - Approximately how many environmental professionals are there in NC that are not licensed as geologists or PEs?

The survey tabulated earlier this year indicates approximately 500 individuals living in NC have current registration with one or more of the four most prominent national environmental associations (IPEP, IHMM, NAEP, NREP). Phone conversations with the executive directors of these associations indicates approximately 15% of their memberships are Professional Engineers.

Question 2 - What is the nature of the reports and/or work for which DEM requires a geologist or PE license or seal? What are these reports used for?

As mentioned earlier, DEM requires PE or PG signatures on reports issued in compliance to 15NCAC 2L and 2N regulations. These reports (dealing with tank removal and site clean up) are the Underground Storage Tank (UST) Closure, the 45 Day Incident report, the Comprehensive Site Assessment (CSA), and the Corrective Action Plan (CAP). These reports are submitted to regional DEHNR offices to document UST removal and/or site remediation if a release has been detected. The CSA and CAP reports show the extent of the contamination and the elected method of cleaning up the release.

The report generated under the 15NCAC 2Q regulation is a new or renewal permit to operate air emission devices normally associated with an industrial manufacturing plant. This air permit application is to be sealed by a PE. These permits are used to establish operating parameters under which an industry may discharge regulated pollutants into the air. Annual fees are normally assessed based on the volume of pollutants emitted and the manufacturing equipment listed in the permit. Operating outside the limits of the facility's air permit may result in fines, rescinding of the permit and/or criminal prosecution.

Question 3 - Does the EPA or other federal agencies require similar reports, and if so, do they require the services of licensed geologists and PE?

In the cases mentioned above the state of NC has been granted the authority to oversee the federal programs dealing with Underground Storage Tanks, Clean Water and Air Quality. The state has basically adopted in total the EPA federal laws and regulations as they stand. However, the federal laws do not specify that these environmental reports must be signed by a PG or PE.

There are other EPA statues that require any "competent or qualified" individual to complete. Under the Superfund Amendments and Reauthorization Act (SARA) several reports, the Tier II and Form R are due annually. The Resource Conservation and Recovery Act (RCRA) requires contingency planning of a facility for chemical emergencies, hazardous waste handling and biannual reporting for large quantity generators. (This report is required annually in North Carolina). The 1994 Clean Air Act revisions under Title V does not require PE signoff in the federal version of the document.

Question 4 - Define, as best you can, the nature of the work of an "environmental professional". For example, what types of activities do they perform? To what extent do these activities overlap with those of geologists, PEs and soil scientists?

The environmental professional is an individual, through education, training and experience, who is capable of analyzing, evaluating, monitoring and implementing corrective measures to protect the earth's environment, ecology and human health to standards and guidelines established by regulatory agencies. The environmental professional is multi faceted and able to work with environmental issues involving air, water, soil and proper utilization of natural resources. The monitoring, handling, manufacturing, processing and minimizing of hazardous materials, chemicals and wastes is a major function of an environmental professional. These activities require the individual to possess a broad knowledge of many scientific, biologic, zoologic, engineering and medical topics.

These activities may be further explained by quoting the definition developed by the Institute of Professional Environmental Practice, (similar definitions of the professional responsibilities are stated by the other national environmental associations):

Among other responsibilities and expertise, environmental professionals will have in depth expertise related to one or more of the following areas:

1. Direct educational, corporate, institutional, governmental and consulting environmental programs.
2. Perform or direct investigations of environmental matters.
3. Interpret results of studies and present specific conclusions to appropriate interested parties, such as the public, corporate and government officials.
4. Make specific decisions as to the need for, or the effectiveness of, environmental control measures, and when necessary, advise as to the operational procedures which will be suitable and effective.
5. Prepare rules, regulations, standards, and procedures, and direct needed action to implement them.
6. Present expert testimony before courts of law, hearing boards, commissions, regulatory agencies and legally appointed investigative bodies covering matters pertaining to their professional expertise.

7. Apply for, prepare, review and approve permits for operating facilities and direct needed action to obtain them.

8. Conduct programs for the education of other professionals and the general public in environmental management.

9. Conduct research to advance knowledge about environmental pollution and ecological subjects.

Some of these environmental tasks can and do overlap into areas traditionally considered as a specific occupation. In the case of an underground tank removal - consultants, well drillers, soil scientists, geologists, general contractors, and engineers have successfully completed projects to state and federal standards. Their success is attributed to their understanding of the multiple environmental issues involved in the project and orderly progression of tasks to completion. There are individuals from these occupations who have not displayed the same level of success in tank projects and this is due mainly to the lack of training in environmental disciplines.

The national associations that register environmental professionals utilize testing programs to demonstrate the individual's environmental proficiency. Applicants must document their college education, total work experience, years in environmental projects, and provide character references. These associations also require membership to advance their personal environmental awareness and through successful completion of continuing education programs. The credentialed environmental professionals must abide to a code of ethics and conduct established by the national association.

Question 5 - Do you know of other states (you mentioned California) that recognize environmental professionals? How do those states determine the professional's qualifications and competence?

California has established a program to register environmental professionals which conduct environmental work in the state. A summary of California's Registered Environmental Assessor law is included in the appendix of the supporting documents binder. I have calls into these national associations to send information on various state acceptance and registration programs of their environmental professionals.

Question 6 - What are the major national organizations and societies that environmental professionals can belong to? What are the educational, experience, and examination requirements for membership, registration, certification, etc. in each one?

Many organizations and societies have affiliations with environmental professionals, for your consideration, four of the major national associations are presented here. They were selected due to their stringent criteria to credential the environmental professional and national recognition as bona fed organization.

Institute of Professional Environmental Practice (IPEP) headquartered in Pittsburg, PA is an independent not-for-profit certifying organization for the Qualified Environmental Professional (QEP) certification.

Institute of Hazardous Materials Management (IHMM) headquartered in Rockville, MD is an independent certifying organization for the Certified Hazardous Materials Manager (CHMM) certification. The CHMM certification is offered at two levels, (senior or master level) depending on the applicant's education and experience.

National Registry of Environmental Professionals (NREP), headquartered in Glenview, IL is a non-for-profit organization providing professional registration to qualified individuals. NREP offers two levels of environmental professional certification, depending on applicant's education and experience, the Registered Environmental Manager (REM) and the Registered Environmental Professional (REP).

National Association of Environmental Professionals (NAEP), headquartered in Washington DC, is a certifying organization which offers the Certified Environmental Professional (CEP) credential to qualified applicants. The CEP may elect for additional certification in one of five environmental disciplines offered in the NAEP program.

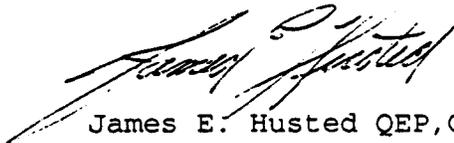
Included in the Supplemental Documents are information and application packets on these organizations. All are similar with minimum requirements of a college degree in a scientific discipline, documented work experience in environmental projects, continuing education, submission of personal reference, subscribing to a code of ethics, and successful passage of an environmental exam.

Environmental professionals belong to many trade or technical associations that are involved in specific environmental issues. These associations normally do not require certification of its membership but rather the group's active participation on identifying and solving environmental issues. Some of the national trade and technical associations include:

Air & Waste Management Association
American Academy of Environmental Engineers
American Association for the Advancement of Science
American Chemical Society
American Industrial Hygiene Association
American Institute of Chemical Engineers
American Meteorological Society
American Society for Testing & Materials
American Society of Mechanical Engineers
American Society of Safety Engineers
American Water Works Association
Association of Local Air Pollution Control Officials
Carolinas Air Pollution Control Association
Chemical Manufacturers Association
Council of Engineering & Scientific Boards
Environmental Auditing Roundtable
National Ground Water Association
Solid Waste Association of North America
State & Territorial Air Pollution Program Administrators
Water Environment Federation

I hope that this letter and the enclosed supplement of documents assists in helping you and the Committee on New Licensing Boards to better understand the need for the state of North Carolina to recognize the "Environmental Professional". If you have any questions or comments, please call me at your convenience, (910) 869-3097.

Sincerely,



James E. Husted QEP, CHMM

ISSUE

The reason for requesting this meeting was the receipt of a DEHNR letter (enclosed) dated January 14, 1994, telling of new rule changes implemented by the state January 1, 1994. Prior to January 1, NC Department of Environment, Health and Natural Resources allowed any competent individual or person to investigate, sample, analyze and report on subsoil and groundwater conditions relevant to a underground storage tank (UST) removal and site closure. These rules (15A NCAC 2L) were modified after review by the Licensing Board of Geologists and the Board of Registration for Professional Engineers and Land Surveyors. These boards concluded that the UST closure process (after all these years) is under their jurisdiction.

No allowances or considerations were made for those individuals or environmental firms currently involved in UST removal and closure projects that were not registered as PE or PG. Our small company has highly qualified personnel and has invested much money to acquire drilling and sampling equipment and portable instrumentation utilized in UST removal, closure and site remediation projects. We believe that our technical backgrounds and work experience in environmental, health and safety compliance should not be discounted as insufficient in the performance of monitoring and report preparation of UST projects. Since our firm was in compliance with all existing state regulations and guidelines for UST removal projects, we should be able to continue providing these environmental services to our clients without reprisal.



NORTH CAROLINA
STATE BOARD OF REGISTRATION
FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Arthur Mowbray

3620 SIX FORKS ROAD
RALEIGH, N.C. 27609

(919) 781-9499
(919) 781-9547

February 4, 1993

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JERRY T. CARTER
EXECUTIVE SECRETARY

Mr. A. Preston Howard, Jr., PE
Director, Division of Environmental Management
Department of Environment, Health & Natural Resources
512 North Salisbury Street
Raleigh, North Carolina 27604

RECEIVED
FEB 8 1993
GROUNDWATER SECTION
RALEIGH, NC

Re: Revisions to Rule 2L-Groundwater Classification Standards

Dear Mr. Howard:

It was recently brought to the attention of the Board of Registration for Professional Engineers and Land Surveyors that opposition has been expressed to changes being proposed to Rule 2L concerning use of licensed professionals. Mr. Larry Greene, Chairman of the Board, has asked me to respond.

Specifically, the opposition is to the requirement that work performed pursuant to the rules of Rule 2L which involves site assessment, interpretation of subsurface geologic conditions, design for corrective action or any work requiring detailed technical knowledge of site conditions or remedial systems be performed by individuals or firms who are duly licensed by the appropriate occupational licensing board. The position of those expressing opposition is that this requirement would preclude certain alleged qualified individuals from performing the subject work.

It is the position of this Board that assessment of conditions at a site where possible groundwater contamination has occurred and/or preparation of corrective action plans and other related work should be conducted by licensed professionals who are committed to safeguard life, health, property, and the public welfare of the citizens of the State of North Carolina. Professionals executing this work must perform in accordance with a code of ethics and are liable to the authority of the appropriate licensing board. As such, they are subject to severe censure and may lose their license for malpractice, misconduct or incompetence. This level of service is essential to ensure that the interest of the public is best served.

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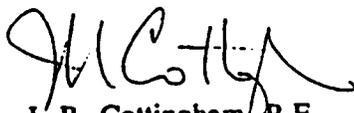
In addition, the corrective action or remediation plans for contaminated soil and/or ground water typically include the design or selection of pumps, piping, valving, electrical controls, oil-water separators, excavation, paving and water/wastewater equipment such as air stripper towers, biological treatment processes and carbon filtration. Performance and component specifications and operating requirements are also usually included in these remediation plans. These services constitute "the practice of engineering" and require the seal of a licensed Professional Engineer.

Nothing in the proposed revisions to Rule 2L would preclude other nonlicensed environmental scientists from performing other aspects of environmental work including Phase I and Phase II Environmental Assessment (audits) for Real Estate transfers and other miscellaneous environmentally related work.

It is our understanding that it has also been suggested that the Division of Environmental Management establish a certification program to qualify individuals to perform this kind of work. We feel very strongly that the examination and licensing process for both Professional Engineers and Licensed Geologists accomplishes this requirement. To duplicate the examination and licensing program being carried out by the duly authorized North Carolina State Registration and Licensing Boards would be a substantial waste of the tax dollar of the citizens of our State.

We appreciate your consideration of this information and we look forward to providing any additional information or explanation that may be requested.

Sincerely,



J. R. Cottingham, P.E.
Chairman, Engineering Committee

cc: Arthur Mouberry, P.E.
Chief, Groundwater Section

EMC members

Chairman
Neil J. Gilbert
Secretary-Treasurer
John E. Callahan



Members:
George L. Bain
Charles H. Gardner
Lynn Earl Graham
Lewis J. Hash

State of North Carolina
North Carolina Board for Licensing of Geologists

P.O. Box 27402 • Raleigh, North Carolina 27611
(919) 781-7297

February 8, 1993

Mr. A. Preston Howard, Jr.
North Carolina Division of Environmental Management
Department of Environment, Health and Natural Resources
512 North Salisbury Street
Raleigh, North Carolina 27604

Subject: Proposed Revisions to Rule 15A NCAC 2L

Dear Mr. Howard:

The North Carolina Board for Licensing of Geologists has learned that opposition has been expressed to certain changes being proposed to Rule 2L. We understand that the opposition is to the requirement that work pursuant to Rule 2L which involves site assessment, interpretation of subsurface conditions, and design for corrective action be performed by individuals or corporations that are licensed by the appropriate occupational licensing board. The specific objection is that the proposed new requirements would preclude certain non-licensed individuals from performing the kinds of activities described under Rule 2L.

It is the position of the North Carolina Board for Licensing of Geologists that assessment of subsurface conditions related to water quality where ground-water contamination has occurred, or associated preparation of plans for corrective action, be conducted by licensed professionals who are committed to safeguard the life, health, property and welfare of the people of North Carolina. Thus, it is in the interests of the citizens of North Carolina that professionals executing work under Rule 2L be bound by a code of ethics and be responsible to an authorized licensing board. As such, these professionals are subject to censure and may lose their license to practice for misconduct or incompetence.

The proposed revisions to Rule 2L would not preclude non-licensed scientists from performing other aspects of environmental work. Such other work elements include non-invasive, environmental work associated with real-estate transfers.

clp:NJG-Rule.Rev

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FEB 11 1993

DIV. OF ENVIRONMENTAL MGMT.
DIRECTOR'S OFFICE

RECEIVED

FEB 11 1993

GROUNDWATER SECTION
RALEIGH, NC

11577

Mr. A. Preston Howard, Jr.
NCDEHNR
February 8, 1993
Page 2

The opposition to the proposed revisions to Rule 2L reportedly includes the suggestion that the Division of Environmental Management establish a certification program to qualify individuals to perform work under Rule 2L. We believe that the licensing process, including a written examination, for registration of Licensed Geologists and Professional Engineers serves this purpose. We see no benefit to the taxpayers of North Carolina by having a state regulatory agency duplicate this process.

We appreciate your consideration of our position on this matter.

Sincerely,

NORTH CAROLINA BOARD FOR
LICENSING OF GEOLOGISTS



Neil J. Gilbert, P.E., P.G.
Chairman

State of North Carolina
Department of Environment,
Health and Natural Resources
Division of Environmental Management



James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary
A. Preston Howard, Jr., P.E., Director

January 14, 1994

Environmental Service Companies
and Consultants

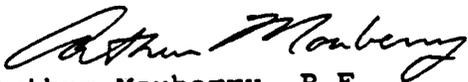
Subject: Professional Engineer or Licensed Geologist
Certifications for Tank Closure Site Assessments

Underground Storage Tanks, regulated under 15A NCAC 2N - "Criteria and Standards Applicable to Underground Storage Tanks" that are substandard, must be upgraded, replaced or permanently closed. When a regulated underground storage tank system is permanently closed, a site assessment must be conducted pursuant to 15A NCAC 2N, Section .0803 to determine if there has been a release. The number and location of samples and the method of their collection are specified in guidance materials available from this Division.

Closure site assessments conducted on or after January 1, 1994, must be performed under the supervision of a Professional Engineer (P.E.) or Licensed Geologist (L.G.) and the subsequent report must be signed and sealed by the P.E. or L.G. Reports that do not bear the seal of a P.E. or L.G. are not acceptable and will be returned. If the report bears a P.E. or L.G. seal from another State, the report must be submitted with a letter from the appropriate North Carolina Board of Registration granting permission to work in this State.

If you have questions, please contact the Groundwater Section staff at one of the Division of Environmental Management offices indicated on the enclosed map.

Sincerely,


Arthur Mouberry, P.E.
Chief, Groundwater Section

State of North Carolina
Department of Environment,
Health and Natural Resources

James B. Hunt, Jr. Governor
Jonathan B. Howes, Secretary
A. Preston Howard, Jr. PE Director

Post-It™ brand fax transmittal memo 7671		# of pages >	
To	Mary Husted	From	Jalal Abdul
On		On	DEM .WSRO
Dept.		Phone #	
Fax	(910) 869-5031	Fax #	(910) 771-4652

DEHNR

January 19, 1995

Dear Permittee:

The Division of Environmental Management has adopted Rule 15A NCAC 2Q.0112 "Applications Requiring Professional Engineer Seal" for some types of air quality permit applications. This rule becomes effective February 1, 1995 and applications submitted after January 31, 1995 will be reviewed for compliance with 2Q.0112. This rule does not apply to applications submitted before February 1, 1995. Applications requiring a professional engineer seal as set out in 2Q.0112 that are not sealed will be returned to the applicant as incomplete.

The language of Rule 2Q.0112 is attached for your reference. This rule requires a professional engineer to seal the technical portions of an air permit application (part D-6) if it involves the design of a control system, determining the applicability and appropriateness of a control system (i.e. will the control system operate properly considering the characteristics of the specific air stream, pollutants, etc.), or determining and interpreting the performance of a control system (i.e. what is the expected control efficiency considering the characteristics of the specific air stream, pollutants, etc.). Several exemptions are provided as follows:

- (1) Non-optional control equipment. This exemption is intended for control systems supplied by the equipment vendor as a standard part of the process equipment.
- (2) Applications for general permits.
- (3) Paint spray booths that are not equipped with a volatile organic compound (VOC) control device (e.g. condenser, carbon adsorber, catalytic oxidizer).
- (4) Particulate (PM) emission sources with air flows below 10,000 acfm. Facilities with multiple PM control systems totaling more than 10,000 acfm will not be granted this exemption.
- (5) Stone crushing and associated processes.
- (6) Simple permit renewals with no changes in control equipment or operating conditions.

For initial Title V applications there is no requirement for a PE seal as long as there are no changes in control equipment or operating conditions.

For further information concerning this rule contact your regional DEM office or Peter Lloyd at (919) 733-3340.

Sincerely,

Alan Klimek

Alan Klimek, PE

.0112 APPLICATIONS REQUIRING PROFESSIONAL ENGINEER SEAL

(a) This Rule shall not apply to permit applications submitted before February 1, 1995.

(b) A professional engineer registered in North Carolina shall be required to seal technical portions of air permit applications for new sources and modifications of existing sources involve:

- (1) design,
- (2) determination of applicability and appropriateness, or
- (3) determination and interpretation of performance,

of air pollution capture and control systems.

(c) The requirements of Paragraph (b) of this Rule do not apply to the following:

- (1) any source with non-optional air pollution control equipment that constitutes an integral part of the process equipment as originally designed and manufactured by the equipment supplier;
- (2) sources that are permitted under Rule .0310 or .0509 of this Subchapter;
- (3) paint spray booths without air pollution capture and control systems for volatile organic compound emissions;
- (4) particulate emission sources with air flow rates of less than or equal to 10,000 actual cubic feet per minute;
- (5) nonmetallic mineral processing plants with wet suppression control systems for particulate emissions; or
- (6) permit renewal if no modifications are included in the permit renewal application.

History Note: Statutory Authority G.S. 143-215.3(a)(1); 143-215.108;
Eff. February 1, 1995.

STATE OF NORTH CAROLINA
RULES REVIEW COMMISSION
1307 GLENWOOD AVENUE, SUITE 159
RALEIGH, N. C. 27605
919/733-2721 FAX 919/733-9415



November 17, 1994

Dedra Blackwell
DEHNR/Environmental Management Commission
Archdale Building
Raleigh, North Carolina

Re: 15A NCAC 2Q .0112

Dear Dedra:

At its November 17, 1994 meeting, the Rules Review Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10.

The Commission objected to this rule due to lack of statutory authority. There is no authority cited to require a professional engineer to do the technical portions set out in (b). If this work constitutes the practice of engineering and requires a professional engineer's license to do it, presumably it is up to the Board of Registration for Professional Engineers and Land Surveyors to enforce that law.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. In the event that this rule is part of a packet of rules, and you wish all the rules to have the same effective date, please contact us immediately. You will not be able to withdraw approved rules once we have filed them with OAH.

If you have any questions concerning the Commission's actions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe".

Joseph J. DeLuca, Jr.
Staff Director

JJD:sw

cc: Dennis A. Wicker, President of the Senate
Daniel T. Blue, Jr., Speaker of the House
Jennie J. Hayman, Chairman, RRC
Julian Mann, III, Director, OAH

To: Jim Husted	From: BOB FULP
Dept:	Phone #
Fax: 869-3031	Fax: 727-2777

**HUSTED & ASSOCIATES, INC.
STATEMENT OF QUALIFICATIONS**

**James E. Husted, President
Senior Environmental Consultant - Environmental, Health & Safety Compliance Auditing**

- BS Chemistry, University of Central Florida, 1971
- MBA Business Administration, University of North Carolina-Greensboro, 1976
- Registered Environmental Assessor - State of California
- Registered Well Driller and Pump Installer - NC
- Asbestos Inspector and Management Planner - State of North Carolina
- Certified Hazardous Materials Manager (CHMM), Master Level
- Qualified Environmental Professional (QEP), Institute of Professional Environmental Practice
- Co-Chairman, Local Emergency Planning Committee, Guilford County LEPC
- Member, Environmental Auditing Roundtable (EAR, professional association for environmental auditing)
- Member and Past President, Piedmont Society of Coatings Technology (professional organization for the paint and coatings industries)
- 40 Hr. HAZWOPER training per OSHA 29 CFR 1910.120
- Past Chairman, American Red Cross, High Point/Thomasville Chapter. CPR and First Aid Instructor
- 16 years experience in QA/QC, industrial safety and plant management for paint and chemical coating manufacturers.
- 8 years experience in EPA and OSHA regulatory compliance consulting.

**Edward L. Lawrence
Senior Environmental Consultant - Water Quality & NPDES Reporting**

- BS Biology, Gardner Webb College, 1971
- Certified NC Water Pollution Control System Operator, Grade IV
- Certified NC Pesticide Aquatic Weed Control & Public Health Pest Control Operator
- Registered Well Driller and Pump Installer - NC
- 40 Hr. Groundwater Pollution and Hydrology, The Princeton Course, 1991
- 40 Hr. HAZWOPER training per OSHA 29 CFR 1910.120
- Member, North Piedmont Wastewater Plant Operator Association
- 18 years experience in water and wastewater treatment.
- 6 years experience in EPA and OSHA regulatory compliance consulting.

**Mary M. Husted
Senior Environmental Consultant - Air Quality & SARA Title III Reporting**

- BS Chemistry, University of Central Florida, 1971
- MBA Business Administration, University of North Carolina-Greensboro, 1978
- Certified Hazardous Materials Manager (CHMM), Master Level
- Registered Well Driller and Pump Installer - NC
- Member, Carolinas Air Pollution Control Association (CAPCA)
- 40 Hr. HAZWOPER training per OSHA 29 CFR 1910.120
- 14 years experience in analytical laboratory management.
- 5 years experience in EPA and OSHA regulatory compliance consulting.



State of North Carolina
Department of Environment, Health, and Natural Resources
Division of Environmental Management
512 North Salisbury Street • Raleigh, North Carolina 27611

James G. Martin, Governor
William W. Cobey, Jr., Secretary

February 5, 1991

George T. Everett, Ph.D.
Director

Mr. James Husted
Hazardous Tank Technology
603-D Eastchester Dr.
High Point, NC 27262

Dear Mr. Husted:

As discussed during our meeting, we have reviewed the materials Husted and Associates is planning to offer in their UST school for tank contractors, fire marshalls, management and any other parties interested in underground storage tank operations.

It appears these seminars will offer very timely training to people in the UST community who take advantage of this opportunity. The idea of "in the field hands on" training associated with the classroom sessions certainly has strong appeal.

The overall curriculum in general appears to include most UST subjects required by the people it is designed to train. As we are not familiar with the specifics being taught in every topic, let us suggest you ensure the following items are not overlooked:

1. Examine and discuss areas in which new State regulations differ from Federal Regulations.
2. Explain how the seven State regional offices fit into the picture.
3. Include information concerning requirements for secondary containment USTs, i.e. tanks in proximity to wells furnishing water for human consumption, near HQW areas and tanks containing hazardous substances.
4. A basic overview of the State and Federal Trust Funds and how they operate.

Pollution Prevention Pays

P.O. Box 27687, Raleigh, North Carolina 27611-7687 Telephone 919-733-7015

We are including a copy of the 1 January 1991 15A NCAC 2N State Regulations, and would suggest you occasionally check with the Department to ensure having the latest guidelines and regulations.

We wish you much success with your certification program for individuals interested in the UST industry.

Sincerely,


Perry Nelson, Chief
Groundwater Section

JH.PL
Enclosure
cc: Bill Reid
File



State of North Carolina
Department of Environment, Health, and Natural Resources
Division of Forest Resources
512 North Salisbury Street • Raleigh, North Carolina 27611

James G. Martin, Governor
William W. Cobey, Jr., Secretary

Stanford M. Adams
Director

May 3, 1991

Mr. James E. Husted, President
Hazardous Tank Technology
603-D Eastchester Drive
High Point, NC 27262

Dear Mr. Husted:

We would like to thank you and your associate for taking time out of your busy schedule to discuss Underground Storage Tank training with our organization. The meeting was both interesting and informative.

During the meeting we discussed our interest in providing UST training for division personnel specifically, permanent closure, excavation and remediation topics. You agreed to provide us with proposals including cost estimates. We are interested in 3 proposals:

1. Training 10 personnel
 - 2 Forest Fire Equipment Operators
 - 2 General Utility Workers/Laborers
 - 1 Supervisor
 - 3 Regional Coordinators
 - 1 Construction Specialist
 - 1 UST Program Coordinator

2. Training 15 personnel
 - 4 Forest Fire Equipment Operators
 - 4 General Utility Workers/Laborers
 - 2 Supervisors
 - 3 Regional Coordinators
 - 1 Construction Specialist
 - 1 UST Program Coordinator

P.O. Box 27687, Raleigh, North Carolina 27611-7687 Telephone 919-733-2162

An Equal Opportunity Affirmative Action Employer

3. Training 20 personnel

- 6 Forest Fire Equipment Operators
- 6 General Utility Workers/Laborers
- 3 Supervisors
- 3 Regional Coordinators
- 1 Construction Specialist
- 1 UST Program Coordinator

Each proposal should include the following information:

1. All training recommended to prepare our crew members for permanent closure, excavation, remediation and safety.
2. The total number of days with a breakdown of classroom hours vs. field demonstration hours.
3. A list of equipment to gear each crew including cost estimates. Attachment #1 is the list of equipment discussed in our meeting including costs.
4. Cost estimates for training under each proposal.
5. Cost savings by utilizing our personnel, equipment and site locations.
6. Cost savings if we allow you to video tape our session.
7. Cost savings if we allow outside individuals to observe our session.
8. Course content information for classroom and field demonstrations should be forwarded with each proposal including lesson plans and audio visuals.

In addition to the proposals, you will need to provide the following information:

1. Historical data on your company.
 - a. How long have you been in business?
 - b. How many people do you employ?
 - c. References
2. Credentials of Trainers
 - a. Who?
 - b. Educational background
 - c. Work History
 - d. Number of training sessions previously conducted.
 - e. Evaluations from clients that attended workshops.

We realize that we are requesting alot of information but it will be necessary to make a proposal to Senior Management. If possible we would like to hear from you by Wednesday, May 9, 1991 so that we can prepare and present a proposal to management on Wednesday, May 15.

Thanks for your assistance. If you have any questions, do not hesitate to call.

Sincerely,

Kathy A. Reitzel

Kathy A. Reitzel
UST Coordinator

Attachment

cc: Mr. Earl Jackson, Vice-President

ATTACHMENT #1

UNDERGROUND STORAGE TANK EQUIPMENT LIST
FOR
PERMANENT CLOSURE AND REMEDIATION

Air Operation Pumps	\$900.00 - \$1000.00
Meter - LKL Oxygen	\$1000.00 - \$1500.00
HNU Meter	\$5000.00 - \$5500.00
Air Saw	\$5500.00
Air Drill	\$50.00 - \$200.00
Nibbler	\$3875.00 - \$4000.00
Air Compressers	Have
Respirators	\$75.00 - \$80.00
Hazardous Waste Suits	\$100.00 for 25
Cutting Torches	\$600.00
100lb. Cylinder	\$100.00
Air D. Fans	\$390.00

MAY - 1990 = 10000



State of North Carolina
Department of Environment, Health, and Natural Resources
Division of Environmental Management
512 North Salisbury Street • Raleigh, North Carolina 27604

James G. Martin, Governor
William W. Cobey, Jr., Secretary

George T. Everett, Ph.D.
Director

July 29, 1991

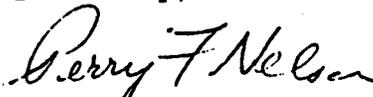
Mr. William H. Edwards, Director
Training Services
Hazardous Tank Technology, Inc.
603-D Eastchester Drive
High Point, North Carolina 27262

Dear Mr. Edwards:

Thank you for the information on Hazardous Tank Technology, Inc. It appears from the literature that you are offering a comprehensive and necessary range of services. Congratulations on bringing this effort to fruition!

I have passed the material on the Dr. Burrie Boshoff, Assistant Chief for Pollution Control, whose Branch is responsible for our UST program.

Sincerely,


Perry F. Nelson, Chief
Groundwater Section

cc: Dr. Burrie Boshoff (w/Attachments)

PFN/asn:Edwards.

Regional Offices

Asheville
704/251-6208

Fayetteville
919/486-1541

Mooresville
704/663-1699

Raleigh
919/733-2314

Washington
919/946-6481

Wilmington
919/395-3900

Winston-Salem
919/761-2351

Pollution Prevention Pays
P.O. Box 29535, Raleigh, North Carolina 27626-0535 Telephone 919-733-7015

An Equal Opportunity Affirmative Action Employer

Hazardous Tank Technology, Inc.

603-D Eastchester Drive
High Point, N.C. 27262
(919) 841-TANK

July 11, 1991

Mr. Perry Nelson, Chief
Groundwater Section
State of North Carolina
Dept. of Environment, Health and Natural Resources
Division of Environmental Management
512 North Salisbury Street
Raleigh, North Carolina 27611

Dear Mr. Nelson:

In an effort to keep your office informed as to the progress that Hazardous Tank Technology, Inc., is making in providing UST safety training opportunities, I am enclosing some materials which may be of interest. I believe that you met with Mr. Jim Husted, Husted & Associates, Inc. and Mr. Bud Blackson, Blackson's Tank Service, Inc., earlier this year at which time the formation of HTT was discussed. Since that time, we have been busy preparing for what is proving to be a very popular and necessary range of services for the UST industry.

Attached, please find the following materials:

- Introductory Letter
- Professional Training Services information
- UST Personal Safety Equipment information
- Instructional Videos and Guidebooks information
- On-Site Consulting Services information
- UST General Supplies and Materials information
- Hazardous Tank Technology, Inc., brochure
- Husted & Associates, Inc., brochure
- Blackson's Tank Service, Inc., brochure

We anticipate a large demand for the training programs and are in the process of scheduling the initial eight hour Basic/Refresher course for late summer, 1991. We have had responses to our brochures (example enclosed) from as far away as Puerto Rico, but primarily from interested North Carolina parties. This is where we wish to concentrate our efforts.

REFERENCE TO "ENGINEER" IN NC ENVIRONMENTAL MANAGEMENT STDS

SUBCHAPTER 2A - ORGANIZATION OF ENVIRONMENTAL MANAGEMENT COMMISSION
NONE

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING
.0407 GUIDANCE FOR DETERMINING A NEW SOURCE

SUBCHAPTER 2C - WELL CONSTRUCTION STANDARDS
NONE

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS
NONE

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS
.0109 PUBLIC NOTICE
.0138 AUTHORIZATION TO CONSTRUCT PERMITS
.0139 MINIMUM DESIGN REQUIREMENTS
.0140 CERTIFICATION OF COMPLETION
.0203 DEFINITION OF TERMS
.0205 APPLICATION, FEES, SUPPORTING INFORMATION
(EXCEPTIONS TO USING P.E. SIGN OFF)
.0218 LOCAL PROGRAMS FOR SEWER SYSTEMS
.0219 MINIMUM DESIGN REQUIREMENTS
.0220 CERTIFICATION OF COMPLETION
.0906 POTW SUBMISSION FOR APPROVAL

SUBCHAPTER 2I - HEARINGS
.0104 AUTHORIZED HEARING OFFICERS

SUBCHAPTER 2J - CIVIL PENALTIES
NONE

SUBCHAPTER 2L - GROUNDWATER CLASSIFICATION & STANDARDS
.0110 MONITORING
.0111 REPORTS

SUBCHAPTER 2N - UNDERGROUND STORAGE TANKS
NONE

SUBCHAPTER 2O - UST OWNER / FINANCIAL RESPONSIBILITY
NONE

SUBCHAPTER 2Q - AIR QUALITY PERMIT PROCEDURES
NONE



HUSTED & ASSOCIATES INC.
P.O. BOX 5256
HIGH POINT, N.C. 27262

Environmental Management Services

July 1, 1994

The Honorable James B. Hunt
Governor of North Carolina
State Administrative Offices
116 W. Jones Street
Raleigh, North Carolina 27603

**RE: PROVIDING ENVIRONMENTAL SERVICES AS A NON PROFESSIONAL CORPORATION
(THE PROFESSIONAL CORPORATION ACT - GS 55B)**

Dear Governor Hunt:

I wrote to you earlier this year (February 15, 1994) concerning the impact of the Professional Corporation Act, GS 55B, on small environmental firms in North Carolina. I have asked for a meeting with you to clarify the 2L and 2N regulations for those companies already in existence prior to the January 1, 1994 rule change. Your office has forwarded my concerns to the NC Division of Environmental Management; however, I am disappointed that I have not yet received any direct correspondence from your office or that of the State Attorney General.

I have contacted the state legislators serving Guilford County and, to-date, Representative Maggie Jeffus and Steve Wood have initiated investigations into some form of grandfathering mechanism for those existing environmental companies affected by the new 2L standards. The new standards imply that if one is not a professional engineer or a professional geologist then he is not qualified to conduct, investigate, consult or assess environmental conditions involving soils, surface waters, ground waters and; in the near future, air emissions. This philosophy is entirely wrong. There are many experienced professional and technical individuals, who are not registered engineers and geologists, but are qualified to perform these assessments. It was only last year that the State Engineering Board implemented a licensing exam for environmental engineering. What is to happen to those environmental firms that have been in existence prior to these new regulations? The information I received from Preston Howard's office of the North Carolina Department of Environment, Health and Natural Resources, has done nothing to clarify this issue.

The Honorable James B. Hunt
July 1, 1994, Page 2

The State has not considered our contribution to society, economic development and environmental protection. This situation must be addressed. It seems to me that if the governing leadership body of North Carolina had true concern for protection of the environment and planned economic development, a response would be in order.

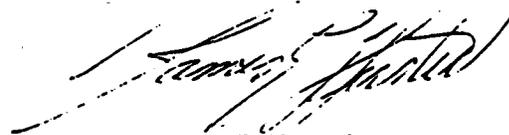
The following are three possible options to correct this problem:

1. Modify the professional statute G-55B to allow environmental firms registered as general corporations to utilize professional engineers and professional geologists in those activities which require those disciplines.
2. Grandfather those firms having conducted environmental work prior to the implementation of the 2L rule.
3. Adopt a licensing registration program (similar to State of California's Registered Environmental Assessors CAL/REA) or recognize one of several national environmental professional proficiency boards as a qualifying mechanism.

It is extremely discouraging that, while the State recognizes and appreciates my leadership role in the Guilford County Local Emergency Planning Committee, it wants to limit my ability to operate a small environmental consulting firm.

It has been five months since I first wrote for your assistance, and so far I have received very little feedback. I would appreciate hearing a response from you. I am willing to meet and further discuss this matter at your convenience.

Sincerely,
Husted & Associates, Inc.



James E. Husted
President

State of North Carolina
Department of Environment,
Health and Natural Resources
Division of Environmental Management

James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary
A. Preston Howard, Jr., P.E., Director



March 25, 1994

Mr. James E. Husted, President
Husted & Associates, Inc.
Post Office Box 5256
High Point, North Carolina 27262

Dear Mr. Husted:

Thank you for sharing your concerns about revisions to the State's 15A NCAC 2L rules which require that underground storage tank closure site assessment reports be completed under the supervision of a registered professional engineer or licensed geologist. Your letters to Governor Jim Hunt and Representative Margaret M. Jeffus were referred to me for a response.

The North Carolina Environmental Management Commission adopted the changes to the 2L rules after the North Carolina Board for Licensing of Geologists and the North Carolina Board of Registration for Professional Engineers and Land Surveyors determined that the tank closure process involves geological and/or engineering practices. North Carolina law (N.C.G.S. 89C & N.C.G.S. 89E) requires that any process determined by the aforementioned licensing boards to require engineering or geology techniques must be performed by a licensed representative of that profession.

I appreciate your concerns about your ability to continue to provide environmental management services to underground storage tank owners in light of the new 2L rules. I would encourage you to continue to work closely with the engineer and geologist licensing boards to identify options that will allow you to continue your work in this field while meeting the requirements in the new rules.

In the meantime, I have asked staff to look into the impacts the new rules have on businesses in regard to the Professional Corporation Act (N.C.G.S. 55B). If you have any questions or would like additional information, please feel free to contact Arthur Mouberry, Chief of the Division's Groundwater Section, at (919) 733-3221.

Sincerely,

Jr A. Preston Howard, Jr., P.E.

APH:dgr

cc: Governor Jim Hunt
Representative Margaret M. Jeffus
Steve Levitas, EHNR
Phil Telfer, AG
Arthur Mouberry, DEM

RECEIVED APR - 4 1994

State of North Carolina
Department of Environment,
Health and Natural Resources
Division of Environmental Management

James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary
A. Preston Howard, Jr., P.E., Director



May 20, 1994

Mr. James E. Husted, President
Husted & Associates, Inc.
Post Office Box 5256
High Point, North Carolina 27262

Dear Mr. Husted:

In a recent letter, you outlined your concerns about revisions to the State's 15A NCAC 2L rules which require that underground storage tank closure site assessment reports be completed under the supervision of a registered professional engineer or licensed geologist. In response to your correspondence, I asked our staff to look into the impacts the new rules have on businesses in regard to the Professional Corporation Act (N.C.G.S. 55B).

The North Carolina Environmental Management Commission (EMC) adopted the changes to the 2L rules after the North Carolina Board for Licensing of Geologists and the North Carolina Board of Registration for Professional Engineers and Land Surveyors determined that the tank closure process involves geological and/or engineering practices. North Carolina law (N.C.G.S. 89C & N.C.G.S. 89E) requires that any process determined by the aforementioned licensing boards to require engineering or geology techniques must be performed by a licensed representative of that profession.

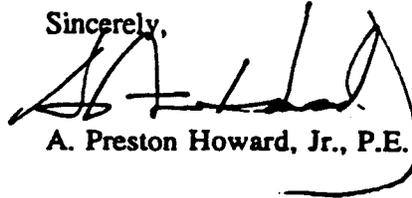
After completing a thorough review, staff in the Division of Environmental Management's Groundwater Section has determined our new rules do not appear to prohibit or require anything not already addressed by the respective occupational licensing boards. Based upon this assessment, it does not appear that this Division has any power to address this issue. The matter would need to be addressed by the General Assembly or the appropriate licensing board, as spelled out in the act.

In your letter, you asked the potential for "grandparenting" provisions. Our review has concluded that the EMC does not have the statutory authority to allow for such provisions. The matter could only be officially addressed by the appropriate licensing board or the General Assembly. I appreciate your concerns about your ability to continue to provide environmental management services to underground storage tank owners in light of the new 2L rules. I encourage you to work closely with the engineer and geologist licensing boards to identify options that will allow you to work in this field while meeting the requirements in the new rules.

Mr. James E. Husted
May 20, 1994
Page Two

If you have any questions or would like additional information, please feel free to contact Arthur Mouberry, Chief of the Division's Groundwater Section, at (919) 733-3221.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Preston Howard, Jr.", written over a horizontal line. The signature is fluid and cursive.

A. Preston Howard, Jr., P.E.

APH:dgr

cc: Governor Jim Hunt
Representative Margaret M. Jeffus
Steve Levitas, EHNR
Phil Telfer, AG
Arthur Mouberry, DEM

State of North Carolina
Department of Environment,
Health and Natural Resources

James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary



November 9, 1994

Mr. James E. Husted
Husted & Associates Inc.
PO Box 5256
High Point, NC 27262

Dear Mr. Husted:

I appreciate your concerns about the revision of the State's 15A NCAC 2L Rules and the effect these revisions have on your ability to provide environmental management services in this state. However, it appears that the Department of Environment, Health & Natural Resources cannot initiate an effort to rescind the requirement of a registered professional engineer or licensed geologist in supervising the completion of underground storage tank closure assessment reports.

After review by the Department's general counsel, it appears that the previous assessments by Preston Howard, Director of Division of Environmental Management is accurate. Mr. Howard stated in his May 20, 1994, correspondence that neither the Division nor the Environmental Management Commission (EMC) has the statutory authority to address the issue of amending the new 2L rules. Mr. Howard further concluded the EMC does not have the authority to address the issue of "grandparenting" provisions. Our counsel concurs.

Therefore, I feel it is in your best interest to pursue changes in the new 2L rules through the engineering or geological licensing boards or the General Assembly. When a member of the General Assembly or pertinent licensing board initiates further changes to the new 2L rules, the Department becomes involved in the revision process.

Sincerely,

Jonathan B. Howes
Secretary

cc: James B. Hunt Jr., Governor
Mike Easley, Attorney General
Representative Stephen Wood
Representative Mary Jarrell



State of North Carolina

Department of Justice

P. O. BOX 629

RALEIGH

27602-0629

REPLY TO: Daniel C. Oakley

Environmental Division

(919) 733-5725

(919) 733-0791-Fax

MICHAEL F. EASLEY
ATTORNEY GENERAL

December 19, 1994

Mr. James E. Husted
Husted & Associates Inc.
P. O. Box 5256
High Point, NC 27262

Dear Mr. Husted:

I enjoyed our recent conversation and thank you for your letter requesting comment on pending issues involving qualifications for certain environmental investigations, monitoring and application submittals. As I explained, our office has had some involvement with these issues in our role as counsel to the Division of Environmental Management. I have asked Special Deputy Attorney General Phil Telfer, who heads the Groundwater and Solid Waste Section, to review the materials you provided and respond to your concerns. He can be reached at this same address (919/733-7247). While our office is not authorized to provide legal opinions or advice to private citizens or individuals, we will be happy to explain the laws and rules administered by DEM in this area.

Hopefully, some progress can be made to resolve this matter. Again, thank you for contacting this office.

Sincerely,

Daniel C. Oakley
Senior Deputy Attorney General

DCO/jj

cc: Phil Telfer

:hustedltr.do



HUSTED & ASSOCIATES INC.
P.O. BOX 5256
HIGH POINT, N.C. 27262

Environmental Management Services

December 20, 1994

R. W. Wilkins, Jr.
Aid to the Governor of North Carolina
State Administrative Offices
116 W. Jones Street
Raleigh, North Carolina 27603

**RE: DECEMBER 14, 1994 MEETING ON PROVIDING ENVIRONMENTAL SERVICES IN
NORTH CAROLINA AS A NON-PROFESSIONAL (GS 55B) CORPORATION**

Dear Mr. Wilkins:

I want to thank you for giving us the opportunity to present our firm's position on this subject. Since my first letter to Governor Hunt in February 1994, I have asked for clarification and assistance for small non-engineering environmental firms impacted by the January 1, 1994, 15 NCAC 2L rule change concerning groundwater contamination encountered in underground storage tank excavation projects. Information received in our December 14, 1994, meeting clarified our position.

Those in attendance from the state were R.W. Wilkins, Governor's Staff; Henry Lancaster, Director of Legislative Affairs, DEHNR; Harlan Britt, Deputy Director of DEHNR; and Arthur Mouberry, Chief of Groundwater Section, DEHNR. Dr. Ken Rogers, P.E. and owner of his own engineering company was also in this meeting as an interested party. The two letters from the PE and PG Boards to Preston Howard, Director of DEM, dated February 4th and 8th, 1993 respectively, concerning the 2L Groundwater Standards revisions that you provided were helpful in further identifying the environmental management issues related to groundwater contamination from UST removals.

I feel that my firm can properly continue to provide environmental services on underground storage tank removal, site closure reporting and soil remediation as long as groundwater contamination has not been established. Per the February 4, 1993, letter from the Engineering Board, the Phase I (non-intrusive site investigation) and Phase II (intrusive site sampling and testing) Environmental Assessments are not considered engineering functions. Once groundwater is found to be impacted, an engineer or geologist will then be retained to oversee the Phase III (remedial work) portion of the project. Our firm will procure the services of these professionals for our clients to quickly and economically mediate an identified chemical release into the groundwater.

The need for the state to recognize qualified environmental professionals that are neither engineers nor geologists is now more critical than ever. We learned that the Division of Environmental Management will not question any policy from the Professional Boards on roles and responsibility. Many non-engineering environmental professionals belong to national non-profit environmental certification boards which require individuals to meet educational and ethical standards. Most of these boards, much like the

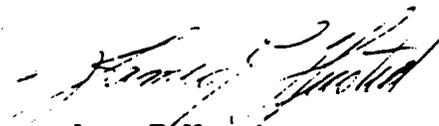
R. W. Wilkins, Jr.
Page 2 - December 20, 1994

state's PE and PG Registration Boards, require their members to maintain proficiency through testing and continuing education. Malpractice, misconduct or incompetence would subject registrants to censure and/or forfeiture of certification. The state needs to consider endorsing a program through which these qualified non-engineering environmental professionals can be recognized.

I have scheduled a meeting to present my concerns and proposals to the Executive Committee of the Board of Professional Engineers in January, 1995. I will include the issues summarized here. I feel that there must be a way by which small non-engineering North Carolina corporations can provide professional environmental services to their clients on matters involving air quality, water and soil investigation, reporting, monitoring, training and permitting. I will report the results of this meeting to you.

I sincerely appreciate the concern you expressed in desiring to see the small environmental consulting businesses, such as ours, survive in North Carolina. I would gladly meet and further discuss these matters. Please feel free to call me at your convenience.

Sincerely,
Husted & Associates, Inc.



James E. Husted
President

cc: Governor James Hunt
Dan Oakley, Senior Deputy Attorney General
H. Lancaster, Director Legislative Affairs
H. Britt, Deputy Director, DEHNR
A. Mouberry, Chief Groundwater Section
J. Carter, Board of Engineering
Guilford County Legislators:
Representative Maggie Jeffus
Representative Steve Wood
Senator Bill Martin
Senator Tom Sawyer
Senator Bob Shaw
Representative Alams Adams, Ph.D
Representative Joanne Bowie
Representative Michael Decker
Representative-Elect Flossie McIntrye
Representative-Elect Joanne Sharpe
Representative-Elect John Cocklereece



HUSTED & ASSOCIATES INC.
P.O. BOX 5256
HIGH POINT, N.C. 27262
Environmental Management Services

COPY

December 28, 1994

George F. Givens, Commission Counsel
Environmental Review Commission
545 Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27611

Dear Mr. Givens:

Thank you for taking time to speak with me on December 22, 1994, concerning qualified non-engineering environmental professionals and the Professional Corporation Act (NCGS 55B). I received a copy of your proposed agenda for the January 20, 1995 meeting from Mr. Doug Howie of the North Carolina Marketers Association. I am pleased to learn that the state does have a legal section devoted to environmental regulations and compliance issues, however, I am disappointed to hear that none of my correspondence to the Attorney General's office had been forwarded to your department for comment. I would appreciate it very much if you would review my letters written to Governor James Hunt and NC DEHNR Secretary Jonathan Howes (enclosed) concerning the impact of NCGS 55B and current changes to 15A NCAC 2L and 15A NCAC 2N.

In brief, prior to January 1, 1994, the NC Department of Environment, Health and Natural Resources allowed any competent individual to investigate, sample, analyze and report on subsoil and groundwater conditions relevant to a underground storage tank (UST) removal and site closure. These rules (15A NCAC 2L) were modified after review by the Licensing Board of Geologists and the Board of Registration for Professional Engineers and Land Surveyors. These boards concluded that the UST closure process (after all these years) is under their jurisdiction.

The new 2L and 2N regulations imply that if one is not a professional engineer or a licensed geologist, then he is not qualified to investigate or assess environmental conditions involving soil, surface water, and ground water when contamination is present. I also understand that it is probable that Title V air permits will also have to be certified by a professional engineer if any control devices are present. I feel that this recent change in the

George Givens, Commission Counsel
December 28, 1994 - Page Two

state's philosophy on utilizing only a PE and/or a PG as the only "approved authority" on environmental issues is completely wrong. This philosophy does a great injustice to many experienced professional and technical individuals, who are not registered engineers and geologists, but are qualified to conduct environmental projects.

I respectfully request a meeting with you and the Environmental Review Commission to discuss alternative methods to allow existing environmental firms not registered as professional engineers or geologists to become "recognized" by the state of North Carolina. I can schedule to meet with you at your earliest convenience.

Sincerely,
Husted & Associates, Inc.



James E. Husted
President

Enclosures

F:\JIMGIVENS.LTR



State of North Carolina

Department of Justice

P. O. BOX 629

RALEIGH

27602-0629

MICHAEL F. EASLEY
ATTORNEY GENERAL

REPLY TO: Philip A. Telfer
Environmental Division
Tel: (919) 733-7247
Fax: (919) 733-0791

January 3, 1995

Mr. James E. Husted
Husted & Associates, Inc.
P. O. Box 5256
High Point, NC 27262

RE: PE and LG Requirements for Environmental Work

Dear Mr. James E. Husted:

Dan Oakley has asked me to follow up on your conversations and letters with him regarding the requirements for Professional Engineers (PE's) and Licensed Geologists (LG's) to perform environmental work required by the State in laws enforced by the Department of Environment, Health and Natural Resources. I have seen your previous correspondence and have discussed it with DEHNR. I did not believe a separate response from our office would be useful and regret if this has led you to believe that our office was neither involved nor concerned about this issue.

From a legal perspective, the position taken on this issue by DEHNR is consistent with the advice our office has given them. In summary, the position of DEHNR is that the licensing boards for PE's and LG's determine if particular work required by environmental rules or statutes is within their jurisdiction. Once that determination is made, it is proper for Department to require that submissions to them by responsible parties be consistent with that interpretation of State law by the Boards charged with implementing the licensing statutes. Your letter to Mr. Oakley equates this position with a determination that only PE's and LG's are capable of performing such work. This is not the case. Many non-licensed persons may be as or more qualified to perform these tasks than those licensed to do them. However, the General Assembly, in order to protect the public, has required that all persons holding themselves out to the public as capable of performing engineering and geologic services be licensed.



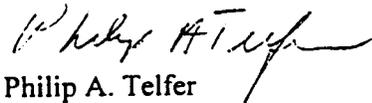
Mr. James E. Husted

January 3, 1995

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In your letters to Governor Hunt you propose several legislative solutions to help with the problems created for you and others similarly situated by the interpretations of the licensing boards as to what constitutes the practice of engineering and geology. I believe you are correct in focusing on those proposed solutions. Frankly, short of such a change DEHNR must abide by the determinations of the licensing boards as to what constitutes activities within their purview whether the 2N and 2L Rules require it or not. While I cannot offer direct assistance to you to work on such legislation, please be assured that I will work with DEHNR on any such proposals introduced in the General Assembly.

Very truly yours,



Philip A. Telfer
Special Deputy Attorney General

cc: Dan Oakley
Preston Howard
Arthur Mouberry

PROPOSALS

Any of the following alternatives would allow existing environmental firms not registered as professional engineers or geologists to become "recognized" by the state of North Carolina.

1) Modify the existing statute N.C.G.S.- 55B to allow environmental firms registered as general corporations prior to January 1, 1994 to bring on staff and utilize professional engineers and geologists in those areas requiring their expertise. Under current statutes N.C.G.S. - 89C general corporations are not permitted to hire engineers for use on outside commercial projects, unless 65% of the stockholders of the corporation are professional engineers.

2) Grandfather those firms having conducted environmental work in accordance to 15A NCAC 2L standards prior to the January 1, 1994 changes. The Professional Boards of Engineering and Geologists should admit and certify those individuals having performed these now re-classified environmental tasks. These licensing boards have sole discretionary power to approve, maintain and modify their professional membership roster.

3) Adopt an environmental licensing or registration program for those individuals involved in providing environmental services. Several states have implemented environmental registration programs. Most note worthy is California EPA's Registered Environmental Assessor (REA) program. The state reviews and qualifies the applicant. Annual fees are collected by the state from each individual to maintain registration.

There are several national professional associations dealing with environmental management which also have competency testing or qualification standards.

Several of the more well known associations are: the National Registry of Environmental Professionals, Academy of Certified Hazardous Materials Managers, Institute of Professional Environmental Practice, Certified Safety Professional. Other national professional organizations which have strong involvement in providing environmental, health and safety services are; the American Board of Industrial Hygienists, Board of Certified Safety Professionals, Environmental Auditing Roundtable, American Society of Safety Engineers, Environmental Auditing Forum, Air & Waste Management Association. There are many more professional associations whose members provide environmental services to citizens and industries within this state.

NOTE:

There are eighteen QEPs in NC. Four of these are employed by State and local environmental agencies.

There are seventy-seven CHMMs in NC. Twenty-two 22 are employed by State and local environmental agencies.

COMMENTS

Recommendation 1 may require action within the General Assembly to modify existing laws governing Professional Corporations. I support a modification of this statute since the current evolution of environmental protection has encompassed and forced many work disciplines together which were once thought as unrelated.

Recommendation 2 would require internal action of the professional licensing boards to grandfather and register individuals performing those environmental services now considered engineering or geology in nature. I sincerely believe this would be the easiest and quickest method to solve this problem. There is a finite number of individuals and small firms within the state that have been affected by the modifications to the 2L standards. These individuals should be allowed to register with the appropriate board and continue in their providing environmental services. Once registered the individual would follow the Board's guidelines for maintaining competency on providing environmental services.

Recommendation 3 may require action within the General Assembly to introduce legislation to establish the utilization, qualifications and registration of environmental professionals. This would take considerable time but the end results would yield a higher level of capable, qualified environmental practitioners serving the state. State registration of individuals possessing one of the credentials from a national environmental association may be the easiest. This would allow professionals such as chemists, botanists, biologists, meteorologists and industrial hygienists work with the existing professional disciplines of engineering and geology without the fear of encroachment on some one's environmental turf. Because most environmental issues are not always clearly defined in black and white, but many shades of grey, a consortium of professionals is needed to address and formulate solutions to complex environmental problems. These solutions must be done timely and with consideration to economic impact to the community. The state should recognize and qualify competent individuals whom have established a level of environmental knowledge acquired from other scientific disciplines.

NOTES, in North Carolina:

There are no PEs serving on Guilford County's LEPC (Local Emergency Planning Committee), for environmental, health and safety protection of one of the major industrial area of the state having a population of approx 400,000 citizens.

There are approx 12 PEs registered under the new Environmental Engr. program.

There are 31 PEs as members of the American Academy of Environmental Engineers.

There are 19 QEPs of which 4 are regulatory and compliance agents.

There are 77 CHMMs of which 22 are regulatory and compliance agents.

There are approx 200 NAEP (National Assoc of Enviro. Professionals) members.

in other states:

California has REA (Registered Environmental Assessor) program to allow non PE environmental professionals to conduct, complete and sign off environmental projects and permits where project design is not involved.

Massachusetts allows a CHMM to sign off on environmental documents that involve the assessing and reporting of hazardous materials and hazardous wastes.

Florida reviewing the QEP as an approved credential for non design environmental work.

additional information sources:

Bill Anderson P.E., Executive Director, American Academy Environmental Engineers.
(410) 266-3311, Board Member IPEP, Board Member CESB

Susan Isenberg, Executive Director, National Association of Environmental Professionals
REM program (202) 966-1500

Nick Hazelwood Phd, President, Institute of Professional Environmental Practice,
QEP (Qualified Environmental Professional) program (714) 660-5333

Stephanie Walsh, Executive Secretary, Institute of Professional Environmental Practice,
QEP program (412) 232-0901

Rebecca Schecter P.E., President, Tri State (NC,SC,VA) Chapter: Institute of Hazardous
Materials Management, CHMM program (919) 541-9100

Doug Howey, Director of Environmental Services, NC Petroleum Marketers Association
(919) 782-4411

